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MICHIGAN EMPLOYMENT RELATIONS COMMISSION
ACT 312 ARBITRATION
PUBLIC ACTS OF 1969 AS AMENDED

In the Matter of the Arbitration Between:

CITY OF RIVER ROUGE

Arbitrator:

-and-

ELLIOT I. BEITNER

LABOR COUNCIL, MICHIGAN FRATERNAL
ORDER OF POLICE (LIEUTENANTS &
SERGEANTS and PATROL)

MERC Act 312
Case No. D88 E 1341

OPINION AND AWARD

Chairman of Arbitration Panel	:	<u>ELLIOT I. BEITNER</u>
Employer Delegate	:	ANGELO PLAKAS
Labor Organization Delegate	:	RICHARD ZIEGLER
Representing Employer	:	ANGELO PLAKAS
Representing Labor Organization	:	DAVID SUCHER
Pre-Hearing Conference	:	November 14, 1988
Hearings Held	:	April 12, 1989; June 26, 1989; July 3, 1989; and July 28, 1989
Executive Session of Panel	:	November 8, 1989
Opinion and Award Issued	:	December 15, 1989

The bargaining agreement between the parties expired on July 1, 1987, and the parties reached a bargaining impasse. A Petition for Act 312 Interest Arbitration was filed and Elliot Beitner was selected as the Impartial Arbitrator; Angelo Plakas was selected as the Employer Delegate; and Richard Ziegler, as the Union Delegate to the Arbitration Panel. Arbitration

River Rouge, City

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DIVISION

hearings were held on November 14, 1988, April 12, 1989, June 26, 1989, July 3, 1989 and July 28, 1989. At the hearings the parties had the opportunity to present sworn testimony, to cross-examine witnesses, and to offer relevant documentary exhibits into evidence.

After the close of the hearings, the parties filed last offers and then submitted post-hearing briefs. An Executive Session of the panel of arbitrators was held on November 8, 1989.

Present for the CITY OF RIVER ROUGE, hereinafter referred to as the "City" or the "Employer," was ANGELO PLAKAS.

Present for the LABOR COUNCIL, MICHIGAN FRATERNAL ORDER OF POLICE (LIEUTENANTS & SERGEANTS and PATROL), hereinafter referred to as the "Union," was DAVID SUCHER.

Background:

In 1969 the Michigan Legislature adopted Act 312 providing for compulsory interest arbitration for police and fire departments. Act 312 provides in pertinent part (Section 8) that with regard to economic issues, the panel is required to select the last settlement offer. Section 8 reads:

The arbitration panel shall adopt the last offer of settlement which, in the opinion of the arbitration panel, more nearly complies with the applicable factors prescribed in Section 9. The findings, opinions, and

orders as to all other issues shall be based upon the applicable factors prescribed in Section 9.

The relevant factors to be considered are set forth in Section 9 as follows:

- (a) The lawful authority of the employer.
- (b) Stipulations of the parties.
- (c) The interests and welfare of the public and the financial ability of the unit of government to meet those costs.
- (d) Comparison of the wages, hours and conditions of employment of the employees involved in the arbitration proceeding with the wages, hours and conditions of employment of other employees performing similar services and with other employees generally:
 - (i) In public employment in comparable communities.
 - (ii) In private employment in comparable communities.
- (e) The average consumer prices for goods and services, commonly known as the cost of living.
- (f) The overall compensation presently received by the employees, including direct wage compensation, vacations, holidays and other excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received.
- (g) Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings.
- (h) Such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment through voluntary collective bargaining, mediation, fact-finding, arbitration or other-

wise between the parties, in the public service or in private employment. MCLA 423.239.

Finally, Section 10 of the Act provides that the panel's decision must be supported by competent material and substantial evidence on the whole record. The Michigan Supreme Court in City of Detroit v Detroit Police Officers Association, 408 Mich 410 (1980) held that it is the panel that must determine the relevant weight to be given to each factor.

The parties agreed that the following cities are comparable to River Rouge: Ecorse, Melvindale, Hamtramck, Highland Park, and Inkster. The evidence was addressed to the four outstanding issues in dispute: (1) wages, (2) pension: multiplier, (3) pension: 2-tier system, (4) residency.

Ability to Pay:

It is apparent to the panel that of the eight factors listed in Section 9 of Act 312, Subsection (c) covering ability to pay is most relevant to the determination of the economic issues of wages and pensions and is of some relevance to the issue of residency. Subsection (c) reads: "The interests and welfare of the public and financial ability of the unit of government to meet those costs." The record is overwhelming that the City of River Rouge is in serious financial difficulty. The Union, in its brief, concedes these difficulties.

In its Pre-hearing brief, the Union argued that the City's financial problems are due in significant part to City mismanagement. While the evidence might suggest some past mismanagement occurred, no direct evidence establishes that assertion. Even, however, if the City is responsible for the financial difficulties of the system, this fact is irrelevant in deciding the issues. Fault or responsibility for economic difficulties is not listed as one of the statutory factors to be considered.

Here, the evidence is overwhelming that the City is in serious financial difficulty. Thomas Doescher, a partner at Plante and Moran, the City's auditors, provided convincing testimony, supported by exhibits, of the dim prospects for any rise in City revenues. Those revenues come primarily from property taxes, which constitute 71% of the general fund, and from state shared revenues, which constitute 22% of the fund. The balance of revenues come from fines, fees and state grants. In prior years the City received money from the federal government under its federal revenue sharing plan, but that program has been eliminated, and the federal government can no longer be depended upon as a source of funding.

With regard to property taxes, Auditor Doescher testified that the City is assessing taxes at the maximum millage rate. The other factor in determining property tax revenue is the amount of state equalized value (SEV), and the River Rouge SEVs have decreased. State shared revenues, Doescher stated, are based on the community's millage level and its popula-

tion. That population has been declining since the census of 1980, and the City, as stated, is taxing at the maximum millage. Therefore, Doescher concluded that while the state shared revenues will be a steady source of income, they will be declining in the near future. He concluded, viewing everything in the most favorable light, that the general fund may remain the same. Expenditures, however, have exceeded revenues in past years.

As of the 1986-87 fiscal year, the City had a general fund deficit of \$1,298,149.00 and the deficit increased for the following fiscal year to \$2,606,049.00. That deficit increased further to 4.4 million dollars for the fiscal year 1988-89. Auditor Doescher considered the City of River Rouge to be among municipalities in the state having the lowest municipal fiscal rating, comparable to Ecorse, Benton Harbor and Highland Park. The City was compelled to enter into a consent judgment with the State of Michigan to avoid receivership.

Furthermore, exhibits indicate cost expenditures for police officers in the City of River Rouge are greater than for any of the comparable communities. River Rouge Patrol Officers in their fourth year are paid a maximum salary of \$28,214.00, and the expenditure per officer including other direct costs and fringe benefits is \$48,599.58. Comparable figures for Melvindale are \$26,728.00 and \$38,757.20; for Ecorse, \$28,023.84 and \$43,946.69; for Inkster, \$28,500.00 and \$43,644.02; for Hamtramck, \$24,653.00 and \$37,697.40; and for Highland Park, \$20,410.85 and \$31,345.13.

Issue One: Wages

Both parties have submitted identical last offers for wages:

1. WAGES. (Patrol/Command)

The Union is requesting the following increases in base wages for the ranks of patrolman, sergeant and lieutenant:

Effective July 1, 1987 through June 30, 1988 - 0% across the board.

Effective July 1, 1988 through June 30, 1989 - 2% across the board (retroactive to July 1, 1988).

Effective July 1, 1989 through June 30, 1990 - 5.5% across the board (retroactive to July 1, 1989).

The last offer of both parties is accepted.

Issue Two: Pension

A. Multiplier

B. Two-Tier System

A. Multiplier

City's Final Offer:

The City proposes that there be no change in existing language, its application or practice, there be no change in the status quo, and that the pension multi-

plier be maintained at its present level of two (2.0%) to a maximum of seventy-five (75%*) percent of FAC.

Union's Final Offer:

The Union is requesting the following change in the current River Rouge Retirement System:

1. Increase the final average compensation multiplier from 2.0% to 2/5%.

A police officer currently may earn up to 70%* of his final average compensation (FAC). The formula is now 2% FAC x years of service. The Union has failed to present competent material and substantial evidence to support an increase in the present 2% multiplier. The Union's exhibits show that the City of Ecorse uses a higher multiplier -- 2.4% for those hired before 1980 and 2.25% for those hired after 1980 -- but do not show the maximum benefit available. Even though a 2.4% multiplier is used, the maximum benefit an Ecorse Officer can receive is 60% of FAC. The City of Ecorse also has an MERS (Michigan Employment Retirement System) pension for employees hired after January 1, 1980, and the City of Hamtramck is also part of the MERS, and witness Nancy Ciccone acknowledged in her testimony that the MERS pension plan offers significantly lower benefits than River Rouge's plan.

* The City states 75% as the maximum percent of FAC that can be earned whereas the Union places the maximum as 70%. The prior contract states that the maximum is 70%, but the Pension Board may have applied a 75% maximum in some cases. Any discrepancy is not relevant to this decision, however, because the only issue in dispute is the multiplier.

Another comparable, Highland Park, uses a defined contribution plan rather than a defined benefit plan, and thus there is no multiplier used. The other comparable cities, Inkster and Melvindale, use a 2% multiplier, the same multiplier used by River Rouge.

There is no competent material or substantial evidence on this record to support a raise in the multiplier. Comparing River Rouge officers to other comparable communities does not support the Union's final offer. Furthermore, a raise in the multiplier would impose direct additional financial expenditures on the City, and it has been determined that the City's financial condition is difficult, and that ability to pay is the most significant issue to be considered. For these reasons the City's final offer to continue the multiplier of 2.0% is accepted.

B. Two Tier System

City's Final Offer:

The City proposes that there be no change in existing language, its application or practice, there be no change in the status quo, and that the present two-tier pension system be maintained so that for all employees hired after 1/1/80 Final Average Compensation will include only:

- (a) Wages, base salary;
- (b) Longevity;
- (c) Shift differential;
- (d) Pay for holidays and sick days earned during the year the employee retired.

Union's Final Offer:

The elimination of the two-tier pension system.

The final average compensation (FAC) of an officer is calculated by taking an average of his last three years of service. What is of issue is what items, aside from wages, are to be considered in arriving at FAC. An officer hired prior to January 1, 1980 is entitled to have considered not only all items included on the officer's W-2 form, but also accumulated sick time, vacation time, personal days and compensatory time. The formula for calculating FAC was reduced for officers hired after January 1, 1980 to include: (a) wages, base salary; (b) longevity; (c) shift differential; and (d) pay for holidays and sick days earned during the year the employee retired. The significant difference appears to be in (d) which restricts the formula to only holidays and sick days during the year the employee retired. Union witness Warren testified that he was informed by auditors for the City pension plan that an elimination of the two-tier system would cost only .42% of payroll.

City Exhibit 65 demonstrates that if the two-tier system were eliminated and the 2.5% multiplier were used, there would be an unfunded actuarial accrued liability of \$32,700.00, and if amortized over 30 years, it would cost the City \$9,817.00 for the first year of change. The City argues that it would also have to offer the same benefit to the firefighters and shows in City Exhibit 66 that this change would result in an accrued liability of

\$63,057.00 and would cost the City \$19,591.00 for the first year. This proposal would cost the City a significant amount of money, and it has been determined that the City's ability to pay is very limited.

The Union argues that .42% of payroll is a minimal amount and that City Exhibit 64 shows that the City's pension system is actuarially sound. The pension system is not at issue, however. What is at issue is the fact that the City would be required to pay additional amounts into the pension system if the two-tier system were abandoned.

The Union also argues that it agreed to the adoption of a two-tier system in concessionary bargaining in 1980 and did not intend for the change to be permanent. Presumably, if the Union agreed to this in concessionary bargaining, there was a quid pro quo offered. The change in 1980 did not affect those who were in the bargaining unit at the time this bargaining occurred. The City's financial situation has not improved since 1980; in fact, the municipality is on the brink of receivership.

Furthermore, a review of the comparable cities shows that four, Ecorse, Melvindale, Hamtramck, and River Rouge, have two-tier systems. A fifth, Highland Park, has a defined contribution pension plan and thus is not a comparable for the issue. Only the City of Inkster has a single-tier pension plan, and its benefits are inferior to those of the City of River Rouge. Thus, there has been no showing on the basis of comparability that the Union

is entitled to this increase. Any increase would have a financial impact and the City is in financial distress. For these reasons the City's last final offer to maintain the status quo and continue the current contract language is accepted.

Residency:

City's Final Offer:

The City proposes that there be no change in existing language, its application or practice, there be no change in the status quo, and that the Union members continue to be required to maintain a primary residence inside the corporate limits of the City of River Rouge.

Union's Final Offer:

The Union is requesting the following modification of the City's residency requirement:

All members covered by this agreement shall be permitted to reside within a twenty mile radius extending from the City limits.

Perhaps the most troubling issue presented is that of residency. The economic conditions of the City dictated the resolution of the clearly economic issues. Residency is not per se an economic issue, but it does have economic overtones. Dr. Hirshorn testified that a study done by an economist from Wayne State University suggested that the loss of revenue in a city when employees are not required to live in that city is approximately twice the

salary of the employees who leave. Thus, where police officers reside does affect the finances of the City.

The City's last final offer is to preserve the status quo and continue the language requiring residency in the City of River Rouge. Residency is a requirement not only for the police officers, but also for the firefighters and all other City employees. The Union has modified its initial offer of eliminating the residency requirement to a last final offer reading: "All members covered by this agreement, shall be permitted to reside within a twenty mile radius extending from the City limits." The Union asserts as arguments in support of removing the residency requirement that in River Rouge housing is inadequate, schools are inadequate, officers are subject to harassment by citizens, and department morale would improve if officers were given the freedom enjoyed by others to live where they wish. Section 10 of Act 312 requires that a decision be supported by competent material and substantial evidence on the whole record. With regard to the issue of residency, the Union relied primarily on the conclusionary and anecdotal testimony of Officer Robert Warren. No testimony was presented by real estate agents about the availability of adequate housing, and even Officer Warren's figures that River Rouge covers 2.4 square miles and has 1.3 square miles of residential areas do not support that an actual shortage of homes exists. He stated that there are 3,500 homes within the City.

With regard to the schools, River Rouge has accredited schools,

and no expert testimony was offered as to the quality of the school system. Again, with regard to assertions that police officers are harassed, no evidence was presented, such as police reports, to support this claim. Only officer Warren's statement that his family had been threatened and his home vandalized were given to support this claim. As the party arguing for this change in the residency requirement, the Union has the burden of proving its assertions.

The firefighters of the City of River Rouge also recently underwent an Act 312 arbitration in which residency was also an issue. Apparently, a voluminous record was developed by the firefighters and the City in that case, but the arbitration panel determined that the residency requirement should not be changed. City Exhibit 79 summarizes the testimony of witnesses to that arbitration. The panel in that case considered the relevant factors set out in Act 312, Section 9, and found two of these to predominate: (1) that traditionally City employees have been required to live within the municipality and that various segments of the community would react negatively to changing the residency requirement, and (2) that changing the requirement would have "ripple effects." Other City bargaining unit members would demand non-residency; potential taxes would be lost; bargaining unit members would shop in their new communities to the detriment of businesses in River Rouge; and public confidence would be eroded as to the efficiency and commitment of these employees. Removing the residency requirement could have some or all of these consequences.

The panel chairman is personally sympathetic to the idea that employees should be free to reside where they want to reside. This is especially true in a small city with a residential area that is limited merely by virtue of the City's size. I am also not persuaded that because residency was an initial condition of employment, it can never be changed. It has been determined by our courts that residency is an issue for negotiations and is an appropriate issue to be heard before an Act 312 arbitration panel. I am persuaded, however, that now is not the time to make a change in the residency requirement. Such a change would be damaging to the interests and welfare of the public and would send the wrong message to a community that is attempting to extricate itself from near financial chaos.

Mayor Cooney testified eloquently about the impact of a change in the residency requirement. He stated:

I need every able bodied human being that is employed by the City of stay and live in the City. I have - through the years we've had an exodus of people moving out of the community. And one of the backbones of the community is our police and fire and public works people.

We have a large number of elderly people in the community and if you can imagine the operation of the City, with all the problems that we have, you know, we're juggling from day to day.

If the word was to go out that our police officers were bailing out per se, you know, of the City, the impact it would have on our citizens, especially our elderly, would be disastrous to say the least.

People would - it would probably start a panic, you know, the exodus out of the community. Figure if our

police officers are bailing out on us, we better get out too. And the impact that would have on the City would be terrible.

He concluded his testimony as follows:

To put it in the proper perspective, I've been asked a lot of questions in respect to the City's finances and I think that everybody kind of knows that we sit up in the mayor's office and bite our nails and pace the floor a lot.

As opposed to, you know, an increase in cost for the City and whether or not the policemen can live in the City of River Rouge, aside from all of my financial problems, in my opinion the residency issue is more serious.

If they were allowed to move out of town it would be terrible, the impact it would have, the setback on my potential for development, the message that it would send to the citizens, would far outweigh any monumental increase that I would have to give the employees by virtue of the working of this panel. It's that serious, we feel that strong about it, the citizens feel that strong about it.

I'll make up, you know, any increase in cost somehow, layoffs, cuts, whatever. Maybe have to close the library, but I have to keep those people in the City.

Paragraph h of Section 9 allows consideration of other factors, not confined to the traditional factors used in determining wages, hours and conditions of employment; the concerns expressed by the Mayor and by citizens fall within this category. There could well be an adverse economic ripple effect if police officers were allowed to move out of the city. It is accepted that when residents of the community relocate, this does have a ripple

effect on the economy of that community. Taxes are affected, and businesses suffer because residents shop in their own communities. If police officers leave the City, others very well may follow. At a time when the City is in a financial crisis, all citizens must work together to improve the situation.

The Union did not build a strong record to support a change in the residency requirement, as stated previously. Anecdotal evidence and conclusionary statements are not convincing. The recent firefighters award on the same issue is of some persuasiveness. Additionally, the contract expires in a few months and therefore a continuation of the status quo will not have any great impact. For these reasons, the City's offer to maintain the status quo with regard to residency is accepted.

Conclusion:

The Panel orders the following:

ISSUE #1 - WAGES:

City's and Union's Offer

ISSUE #2 - PENSION:

A. Multiplier

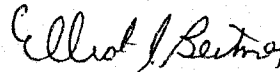
City's Offer - No Change

B. Two-Tier System

City's Offer - No Change

ISSUE #3 - RESIDENCY:

City's Offer - No Change



ELLIOT I. BEITNER, Chairman
Panel of Arbitrators

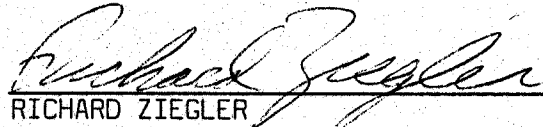
Angelo P. Akas

ANGELO P. AKAS

Employer Delegate concurring on

Issue(s) 1, 2-A, 2-B, and 3 ;

Dissenting on Issue(s) None


RICHARD ZIEGLER

Labor Delegate concurring on

Issue(s) 1;

Dissenting on Issue(s) 2A 2B, 3